



650 Capitol Mall, 5th Floor
Sacramento, CA 95814
916.445.5511 FAX 916.445.7297
<http://calwater.ca.gov>

Agenda Item: 14-5A
Meeting Dates: April 13 and 14, 2005

JOINT MEETING WITH BAY-DELTA PUBLIC ADVISORY COMMITTEE

WORKING LANDSCAPES SUBCOMMITTEE

REPORT TO BAY-DELTA PUBLIC ADVISORY COMMITTEE

Payment-In-Lieu-Of-Taxes

(See Attached)

Date: March 28, 2005

To: California Bay-Delta Public Advisory Committee

From: Working Landscapes Subcommittee

Subject: PAYMENT-IN-LIEU-OF-TAXES PROGRAMS

Summary: PILT programs are intended to offset adverse impacts on local property tax revenues associated with state and federal acquisitions of private property. Because implementation of the CALFED Program involves, in certain cases, the acquisition of private property to achieve its goals, it poses the potential for adverse impacts on city, county and special district tax bases.

The information presented herein- including the recommendations of a workgroup of the Working Landscapes Subcommittee- are for information only. They provide a strategy to help secure the equitable payment of Payment In-Lieu of Taxes (PILT) to local governments when land is purchased for restoration or other activities related to the Program. The recommendations related to the payment of PILT are intended to lessen the burden on local governments, primarily in rural areas of the state, who are less able to absorb the loss of revenue from property taxes associated with land acquisitions.

Recommended Action: Information only.

Background

In October 2003, the Working Landscapes Subcommittee (WLS) appointed a workgroup to examine the performance of state and federal payment-in lieu-of-taxes (PILT) programs. Through their research, the workgroup revealed that there is a similar, but slightly different, PILT program at the federal and state level.

The Bureau of Land Management (BLM) administers the Federal PILT program on behalf of all federal land holding agencies. Based on a specific formula, a payment to local governments is calculated "in-lieu" of agency's direct payment of taxes. After the PILT is established, the BLM includes PILT funding in its annual budget request to Congress. If funding is appropriated, the BLM makes the payments directly to the counties. These PILT payments are perhaps the only federal payments to counties that do not pass through the state Department of Finance.

At the state level, only lands acquired by California Department of Fish and Game (Fish and Game) for wildlife management areas qualify for PILT. State PILT payments are based on appraisals that are made at the time of acquisition. Unlike the federal PILT

payments, the appraisals and the resulting PILT payments are fixed in time and do not get adjusted for cost of living increases through fresh appraisals.

Historically, the congressional appropriations for PILT have fallen short of that owed to local governments by 40 to 50 percent, improving to a 30 percent shortfall in 2004. When appropriations are not sufficient, the BLM prorates available funds proportionately among counties based on their authorized amounts.

At the state level, PILT payments are included in the administrative portion of the Department of Fish and Game budget. Historically, the state has consistently paid the PILT payments, absent a budget shortfall. In adequate budget years, the Department has retroactively brought their payments current.

The WLS is now bringing forward to Bay-Delta Public Advisory Committee (BDPAC) the workgroup's recommendations which are summarized below for information and discussion at this meeting. The WLS anticipates bringing forward similar recommendations, calling for appropriate action by BDPAC at a future meeting:

1. Request that the administration list state PILT payments owed to local governments as distinct line items in the state budget.
2. Recommendation that the state legislature consistently approve authorization for PILT payments to local governments for CALFED-funded land acquisitions.
3. Recommendation that the Governor work with California congressional leaders and the federal administration toward full PILT payment authorization by Congress.
4. Recommend that the State examine state PILT legislation to include all resource-related acquisitions as qualifying for PILT.
5. Support of legislation or regulations to amend the state process for calculating PILT to include a regular periodic readjustment of the PILT payment amount, similar to the practice used by the federal government in calculating PILT payments. This would eliminate the concern that once a property is acquired by the state, the PILT payment is fixed in perpetuity, without consideration of the changing values of similar properties.

For a more in-depth discussion of the activities and research of the workgroup, please refer to the attached full staff report to the WLS (Attachment 3) and a supporting document regarding benefit assessments (Attachment 2).

Fiscal Information

Associated staff time for implementation

List of Attachments

- Attachment 1 – Reducing Dissatisfaction with the Economic Impacts of Habitat Acquisition Activities in the Sacramento River Conservation Area
- Attachment 2 – Prop 218 analysis memorandum, dated October 21, 2004
- Attachment 3 – Progress Report and Recommendations to the Working Landscapes Subcommittee, dated October 26, 2004
- Attachment 4 – PILT chart, non-payment by county

Contact

Denny Bungarz, Co-Chair
Working Landscapes Subcommittee
Bay-Delta Public Advisory Committee

Staff Assistance

Ken Trott
California Department of Food and Agriculture

Phone: (916) 651-9445

Vickie Newlin, Regional Coordinator
Sacramento Valley Region
California Bay-Delta Authority

Phone: (916) 996-2633

**Reducing Dissatisfaction with the Economic Impact
of
Habitat Acquisition Policies
in the
Sacramento River Conservation Area**

Prepared for
CALFED Bay-Delta Program

Prepared by
**Ranjit Bharvirkar
Bryan Ehlers
Kellyx Nelson
Luke Tonachel**

University of California, Berkeley

May 12, 2003

Our most sincere thanks to the following people, without whose time and input this study would not have been possible.

Ryan Broddrick, Burt Bundy, Denny Bungarz, Dan Cummings, John Ellwood, Lee Friedman, Renee Hawkins, John Hoffman, Diana Jacobs, Curt Josiassen, Kari Lewis, Cathy Morris, Marlyce Myers, Alex Oehler, Jeff Sutton, Margaret Taylor, Greg Werner, Patrick Wright, Dawit Zeleke, and Matt Zeiper.

Table of Contents

Executive Summary	4
1. Introduction.....	7
1.1 Geographic Area of Concern	7
1.2 Focus and Scope	7
2. Methodology	8
3. Findings.....	8
3.1 Mechanisms of Habitat Restoration.....	8
3.2 Sources of Dissatisfaction with Land Acquisition.....	10
3.3 Federal PILT Program	13
3.3.1 Legislative history.....	13
3.3.2 Process	13
3.3.3 Historical record.....	14
3.4 State PILT Process.....	16
3.4.1 Legislative history.....	16
3.4.2 Process	17
3.4.3 Historical record.....	17
3.5 Pending Legislation	18
4. Criteria for Recommendations.....	18
4.1 Criteria Explained	18
4.2 Options Considered But Eliminated	19
5. Recommendations.....	19
5.1 Legislation.....	19
5.1.1 Support legislation that would improve PILT programs	20
5.1.2 Explore California-specific federal legislation to ensure PILT payments.....	20
5.1.3 Explore a CALFED budget line item as alternative funding for PILTs	20
5.2 Alternative Sources of In Lieu Funding.....	20
5.2.1 Explore lump-sum alternatives to PILTs	20
5.2.2 Explore a third-party guaranteed payment plan.....	21
5.3 Outreach.....	21
5.3.1 Formalize liaison relationships between CALFED and stakeholders.....	21
5.3.2 Include outcomes in outreach performance measures	22
6. Conclusions.....	22
Personal Communications	25

Figures

Figure 1: Project Study Area.....	5
Figure 2: Detail of Sacramento River Conservation Area	6
Figure 3: Focusing on PILTs	10
Figure 4: Federal PILT Process	15
Figure 5: PILT authorization limits from 1998 through 2002	16
Figure 6: State PILT Process	17

Executive Summary

This report focuses on mounting dissatisfaction with the PILT program in counties along California's Sacramento River. When federal or state government agencies purchase land, they are generally exempt from paying property taxes to the county that originally had jurisdiction over the land. The agency's acquisition, therefore, can represent a loss of significant funds for the county, making the provision of vital services difficult.

Congress and state legislatures recognized the hardship on local governments and designed a program to provide payment in lieu of taxes (PILT) to compensate the county governments for the lost proceeds. The PILT payments, however, have historically been paid below full authorization, leaving counties with a smaller tax compensation package and fueling resistance to future land acquisition.

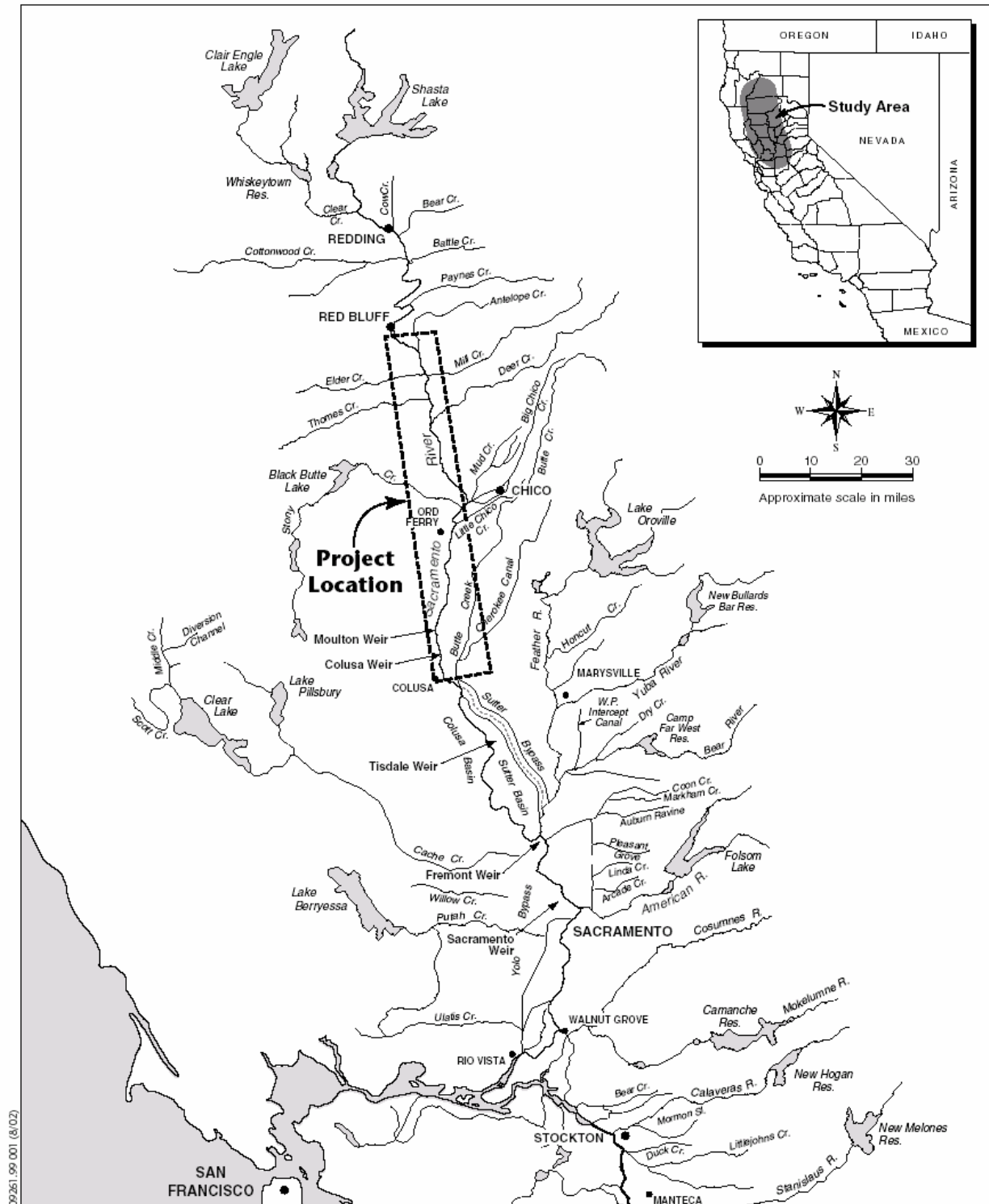
Several government and non-profit agencies are working together under the banner of the CALFED Bay Delta Program to restore habitat along the Sacramento River. To continue their conservation efforts, they must address the dissatisfaction with the PILT program as it relates to land acquisition.

In this study, the broad range of interests from the agricultural community, local government and environmental groups were considered in proposing solutions that would ensure greater certainty of proper PILT payments and help further the goals of river habitat restoration. The following actions for CALFED and appropriate stakeholders are recommended to solve PILT problems:

- Actively support Congressional H.R. 380 and S. 511
- Explore California-specific federal legislation to ensure PILT payments
- Explore a CALFED budget line item as alternative funding for PILTs
- Explore lump-sum alternatives to PILTs
- Explore a third-party guaranteed payment plan
- Formalize liaison relationships between CALFED and stakeholders
- Include outcomes in outreach performance measures

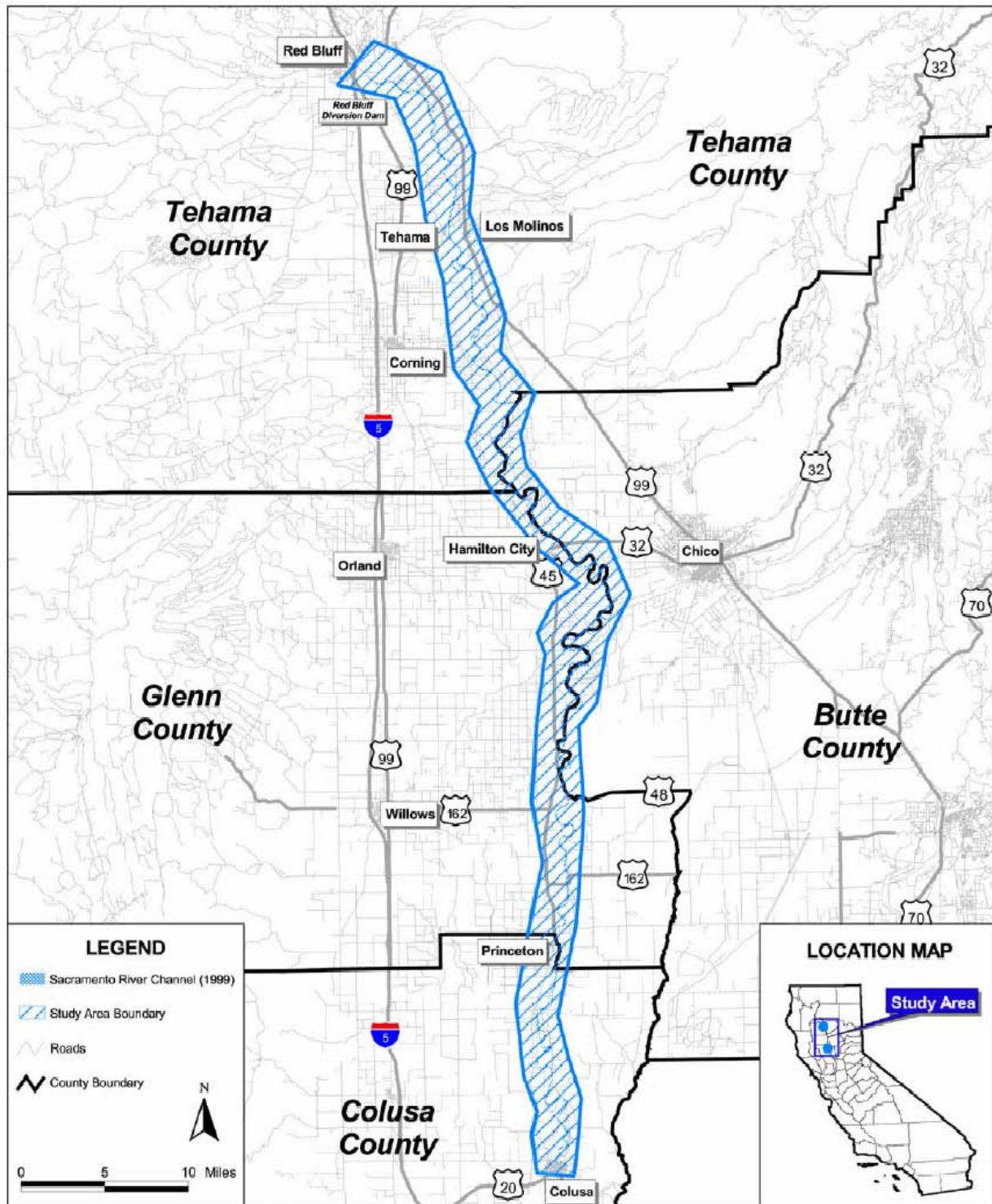
This document is intended to offer substantive recommendations and serve as a template for further discussion and mediation of PILT-related issues among all stakeholders.

Figure 1: Project Study Area



Source: Jones and Stokes, 2002.

Figure 2: Detail of Sacramento River Conservation Area



Sources: TNC (2002); FPAW (2002)
Source: Jones and Stokes, 2002.

1. Introduction

1.1 Geographic Area of Concern

The Sacramento River flows 380 miles from Mount Shasta to the San Francisco Bay Delta. It is California's longest river (See Figure 1). The largest source of fresh water emptying into the Delta, it is a major contributor to the irrigation of California agriculture, as well as four salmon runs.¹ The United States, California, and conservation organizations have identified the Sacramento River Conservation Area (SRCA) as a focal point for restoration efforts involving federal and state agencies, environmental groups, and private landowners.² As the map in Figure 2 indicates, the SRCA is a 250-mile stretch of river and adjacent lands below Shasta Dam, running through Glenn, Tehama, Butte, and Colusa counties.

1.2 Focus and Scope

CALFED's Ecosystem Restoration Program (ERP) is developing a plan to restore ecological health and improve water management for the system. ERP is intended to address reduced numbers of native flora and fauna, and to assist with the recovery of endangered species. Habitat restoration is a key component to restoring the ecological health of the SRCA.³

There is mounting dissatisfaction with current habitat restoration policies in the Sacramento River Valley, with various implications. Resistance to some types of restoration has resulted in a more cumbersome and costly process for all involved. In some cases, restoration efforts have been halted altogether.⁴ There are additional concerns about dissatisfaction simply because it is the desire of the restoration agencies to act with as much consensus as possible.

The stakeholders concerned with current policies include agricultural and related industries, municipalities, county governments, state and federal agencies, and environmental interests. The dissatisfaction may be related to the process by which restoration decisions are made, mechanisms and fairness of compensation when lands are purchased for habitat, flood control issues, strong values about public versus private land ownership, differing values placed on restored habitat, and concerns regarding the Endangered Species Act.

When lands are acquired by government agencies or non-profit organizations, they are generally removed from property tax rolls. As compensation for lost tax revenue, a traditional solution has been for state and federal governments to provide county or other local governments annual payment in lieu of taxes (PILT). However, PILT payments have proven to be an unreliable revenue source, often not fully compensating counties for lost revenue.⁵

¹ Water Education Foundation, 2000a.

² Water Education Foundation, 2000b.

³ Ibid.

⁴ Hacking.

⁵ Bureau of Land Management.

This study focuses on dissatisfaction with habitat acquisition due to PILT programs.

The goal of this study is to analyze dissatisfaction due to poor compensation for lost property tax revenue to counties, and to propose solutions to address this dissatisfaction. To that end, a detailed description of the PILT process and its gaps is provided. The criteria used to evaluate different options are discussed, as well as the resulting recommendations. It is not within the scope of this paper to conduct an original economic analysis of the effects of land acquisition.

2. Methodology

This study was conducted for public distribution through the CALFED Bay-Delta Program. CALFED is a consortium of state and federal agencies with management and regulatory responsibility for water resources of the San Francisco Bay and Sacramento-San Joaquin River Delta estuary, including the entire Sacramento River drainage.

Extensive interviews were conducted with farmer landowners, representatives of agricultural interests and conservation agencies, and officials from state, federal, and county government. Quotations from these interviews appear throughout this document. As these quotations are intended to represent a viewpoint and not identify an individual, the quoted remain anonymous. Habitat restoration sites, adjacent farmlands and communities were visited. Existing literature and economic analyses were reviewed along with legislative history and models of conservation practices in other areas of the country. Data on PILT payment histories and distributions were also reviewed. From this research, criteria were developed by which potential recommendations were evaluated.

3. Findings

Findings are grouped in the following general categories: mechanisms for habitat restoration programs, sources of dissatisfaction with land acquisition policies, and a detailed description of the PILT process, legislative history, and record of payment.

3.1 Mechanisms of Habitat Restoration

As illustrated in Figure 3, habitat restoration may take the form of conservation easements, education of landowners, or land acquisitions. In the Sacramento River Valley Conservation Area, it has sometimes been necessary to acquire farmland, which is then converted to habitat.

Land management education:

A significant tenet of CALFED's habitat restoration program is to educate landowners and communities about the value of ecologically productive habitat, as well as ways to achieve that goal. The Working Landscapes Committee of CALFED endeavors to provide landowners with

incentives and support for wildlife friendly farming practices, assisting with regulatory processes and permits, and attempting to minimize adverse impacts to agricultural resources.⁶

Conservation Easements:

Conservation easements conserve land while allowing a landowner to continue using it. Easements are used to protect land by purchasing the development rights without buying the property, creating a voluntary binding agreement that permanently limits a particular property to conservation-compatible uses. The owner retains title to the land, continuing to pay property taxes. Easements are paid as compensation for reduced property value due to limiting the land's uses or potential uses. Typically, conservation easements prohibit subdivision, development, and other activities that are incompatible with healthy natural habitats. In the SRCA, there is generally little dissatisfaction with this type of habitat restoration.⁷

Land acquisition:

There are times when lands are acquired to meet restoration goals. This may be because a landowner is not interested in keeping the land and wishes to sell. It may be that, for ecological reasons, the land should be taken out of agricultural production, as when the risk of run-off from agricultural practices is detrimental to ecological goals. In the area of this study, acquisitions are particularly common in flood plain areas where farmers wish to sell land that is not profitable.

Land acquisitions are an area of great concern among the stakeholders in this study. There are widely divergent estimates of the total acreage of farmland that will be taken out of production to meet CALFED restoration goals. While CALFED has estimated that perhaps a hundred thousand acres⁸ of land may be acquired, the California Farm Bureau estimates upwards of a million acres.⁹

CALFED's 2000 Record of Decision (ROD) marked an explicit effort to deemphasize land acquisition and focus on easements. It must be noted that, when land is acquired, it may or may not be taken out of agricultural production. CALFED notes that farmland is often preserved by their acquisitions (although that farmland is still taken off the tax rolls).¹⁰ By their estimation, 82,000 acres have been protected by their actions thus far. While only 15,000 acres have been converted, 90 percent of the conversion took place before CALFED's ROD.¹¹ The California Farm Bureau disagrees with these estimates.¹² Many people interviewed indicated that the problem may be as much about perception as economics.

⁶ CALFED Working Landscapes Subcommittee.

⁷ The Nature Conservancy.

⁸ Wright.

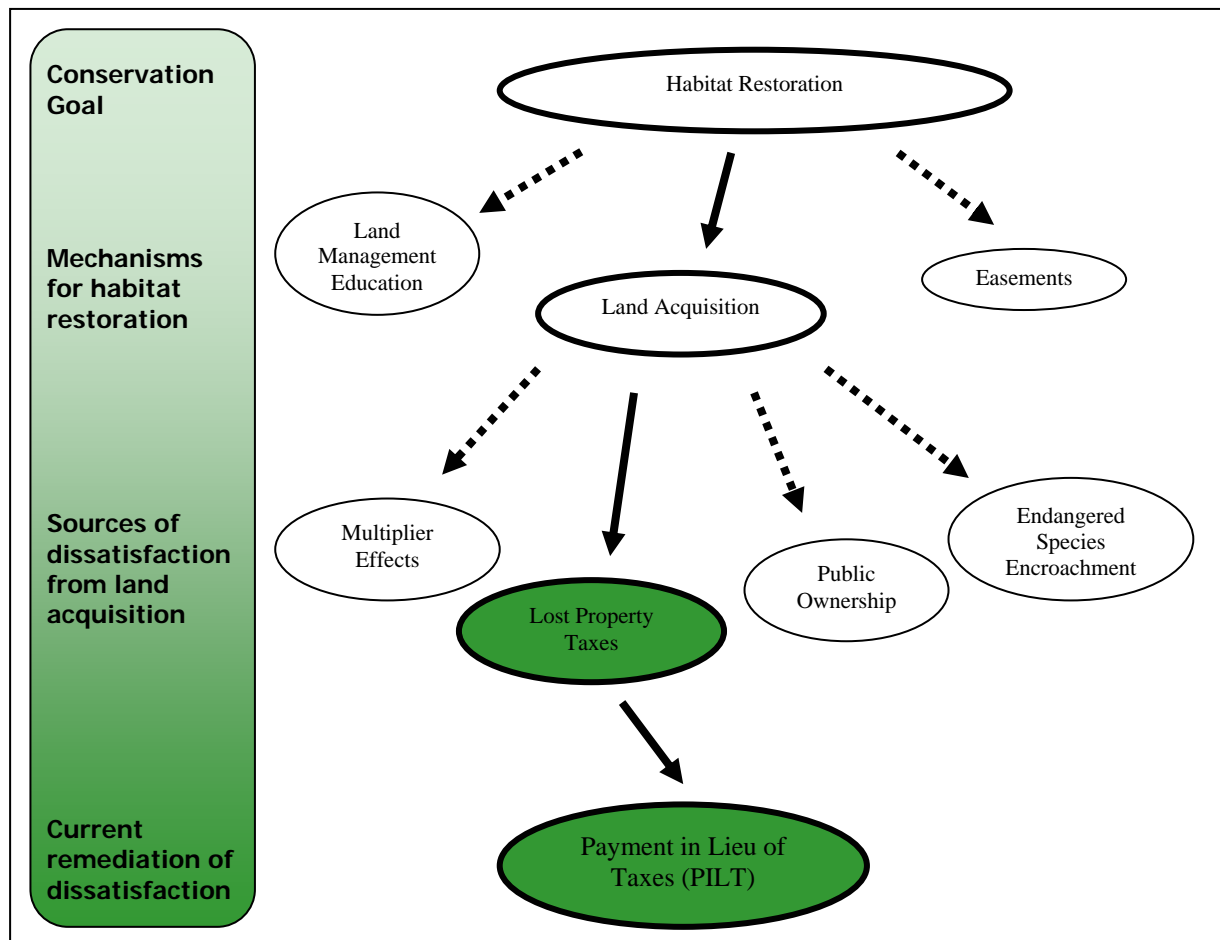
⁹ Farm Bureau Federation.

¹⁰ Wright and Hawkins, April 11, 2003.

¹¹ Wright for all figures in this paragraph.

¹² California Farm Bureau Federation.

Figure 3: Focusing on PILTs



3.2 Sources of Dissatisfaction with Land Acquisition

As illustrated in Figure 3, dissatisfaction with land acquisition for habitat restoration arises for many reasons. In addition to lost property taxes, residents of impacted communities are concerned with multiplier effects that adversely affect their local economies.¹³ Many are troubled by the costly impacts to agriculture when endangered species enter newly restored habitat and begin to encroach on neighboring farms.¹⁴ Still others believe that private land should remain in private hands, and that public land acquisition should be avoided at all costs.¹⁵

There are problems with PILT programs specifically:

- (1) There is a great deal of uncertainty for those dependent on the payments, as the payments rely on annual government appropriations. Payments at the federal level have

¹³ Jones and Stokes.

¹⁴ Oehler.

¹⁵ Pervasive theme in interviews.

never been made at the full authorized amount, and were not made at all on the state level this year.¹⁶

(2) The true value of the payments erodes due to inflation. Under current legislation, some property values are not reassessed over time.

Since local governments often depend heavily on property taxes as income, this inability to tax the properties acquired may have significant impact on a county's ability to provide services.¹⁷ The counties use the PILT payments in a variety of ways.¹⁸ Some counties may choose to treat the PILT payments similar to the property tax revenues that they collect or some counties may choose to treat the PILT payments in a totally different way.

In California approximately 50 percent of the property tax revenues are used to maintain the school system.¹⁹ However, the exact portion of the property tax revenues that each county devotes for the school system can vary substantially. If a county earmarks the PILT payments for funding its school system, in the years when either the federal or the state government or both do not make the PILT payments or make partial PILT payments, the school system in that county may be affected significantly.

Rivaling economic analyses provide divergent estimates of economic impacts to counties. Analyses project different revenues from recreation that will be possible when habitat is restored, may or may not include multiplier effects, and cover different geographical areas (county vs. entire valley).

The following hypothetical story is based upon interviews with stakeholders on all sides of the land acquisition issue and seeks to provide the context in which stakeholder dissatisfaction can be better understood. The story is a composite sketch and is not intended to represent all viewpoints or the viewpoints of any real person.

¹⁶ Bureau of Land Management

¹⁷ Jones and Stokes.

¹⁸ Jones and Stokes

¹⁹ Legislative Analysts Office, 2001.

A Seller

Doug Neilsen, owner of Neilsen Orchards, has been looking at his books. Because of flood damage and new regulations on agriculture, the profit margin has been steadily decreasing on his walnut crops that are along the river and get flooded every couple of years. He has approached The Nature Conservancy (TNC), a willing buyer in his county for this kind of land. They in turn will probably sell the land to the California State Department of Fish and Game or the U.S. Fish and Wildlife Service for habitat restoration.

Doug has been struggling with this decision because he has strong feelings about keeping private land in private hands. However, this land is his business and his business is losing money. A decision must be made. Doug is aware that his decision may impact others in his community.

A Neighbor

Sam Davis, his neighbor, owns Davis Growers. Sam is concerned that, if Doug's land is converted to wild habitat, endangered or threatened species may come onto his property. His perception is that, under the Endangered Species Act, he will be penalized if a protected species enters his land and his normal farming practices cause them harm. Sam shares Doug's feelings about private ownership of land. However, he feels frustrated that he has no input in land use decisions that directly affect him.

A Community

In the last few years, several other farmers in the community have sold their land. A number of those parcels went out of agricultural production. Sheryl Corvino, a local supplier of agricultural products in town, has seen a decline in business these last few years and attributes it to this trend of land sales for habitat restoration. Like Sam, Sheryl would like more input in land use decisions that affect her. But they respect Doug's right to make decisions about his land and his business.

A County

Meanwhile, in County Hall, the supervisors are meeting and discussing the financial outlook for the county. More land has gone into public ownership these last several years and the property tax base has declined. State and federal payments in lieu of taxes, originally intended to remediate this problem, were not made at maximum level again. It is difficult to plan a county budget with so little certainty about PILT income from year to year. The supervisors are discussing a couple of options—demanding full payment from the appropriate government agencies and passing county legislation requiring zoning permits like they do for other special use lands.

A Conservation Agency

Meera Hughes is a Field Representative for TNC. They have a particular interest in habitat restoration on lands adjacent to the Sacramento River. Meera works with willing sellers to purchase these parcels. Although TNC is committed to a community-based process, the increasing dissatisfaction within the community has made it more difficult to acquire land. She is concerned that she may not be able to purchase Doug's property, which is on a segment of the river that is critical salmon spawning habitat.

TNC is sensitive to heightened community interest in public land issues and has therefore asked Doug to join them in any public forum. This, too, is of concern to Doug. If he publicly states that his land has diminished in value for agriculture, what will happen to him if TNC does not or cannot buy his land for habitat?

As the story above illustrates, dissatisfaction with land acquisition policies for habitat restoration has many sources and takes on many forms. Lost property tax revenues and the PILT programs that are designed to remediate them are only one aspect of a complex set of issues. However, as the following section will identify, the problems with PILT payments are tangible and discrete, and are potentially reparable.

3.3 Federal PILT Program

The federal government pays PILTs to a county for lands in that county owned by federal agencies. Similarly, the state of California pays county governments for state-owned land. The legislative history, the administration of the PILT programs, and the historical record of PILT payments sent to county governments are significantly different for the federal government and the state of California. In the next several sections the similarities and differences between federal and state PILT programs will be discussed.²⁰

3.3.1 Legislative history

As U.S. policy was shifting in the 1970s toward greater public ownership of large tracts of land, Congress recognized that counties should be compensated for lost property taxes and passed the Payment in Lieu of Taxes (PILT) Act of 1976. The Act authorized the Secretary of the Interior to make annual payments to counties in which entitlement lands are located. Examples of entitlement lands include lands under the administration of the National Park Service, National Forestry Service, and Bureau of Land Management as well as National Wildlife Reserve Areas.

After years of not receiving full authorization of their PILT payments, county government officials became concerned that the payment levels were too low and failed to keep pace with inflation. Congress responded in 1994 by amending the PILT Act to raise the Secretary of Interior's payment authorization levels and to tie future increases to the Consumer Price Index. The new formula in the amendment affected only *authorization* levels, however, and did not guarantee that Congress would appropriate more funding per acre of federal land. Authorization levels provide a limit to which Congress can appropriate. This limit is not a contractual obligation, but a cap.

3.3.2 Process

The federal PILT process is shown in Figure 4. Bureau of Land Management (BLM), the agency that administers the federal PILT program, calculates payments due to each county by (1) acreage of entitlement land acquired by the federal government in the county, (2) the population of the county, and (3) payments made to the county under other federal programs.²¹ The PILT formula is written such that if the same quantity of land is acquired from two counties, the county with the larger population is entitled to a larger payment than the county with the smaller population. Sparsely populated rural counties often perceive this arrangement as unfair.

²⁰ The information about both the federal and state programs come from the BLM, Corn, Hoffman, and Adams and Gallo.

²¹ California Department of Water Resources reports acreage data to BLM, while the U.S. Census Bureau reports the population data. Payments made under other programs such as Refuge Revenue Sharing Fund, National Forest Fund, Taylor Grazing Act, Mineral Leasing Act, and Federal Power Act are reported by both the California Governor (as part of the state audit) and the federal agencies that made the payments to the counties.

BLM annually calculates the PILT payment due to each county and requests an amount from Congress as a part of its annual budget. Congress deliberates on the amount requested and decides upon an appropriation. Congress then directs the U.S. Treasury to release the appropriated amount to BLM. Based on this amount, BLM transfers the PILT payments to each county. Funding limitations are equitably applied to all payments. If, for example, funds are appropriated at 60 percent of full authorization, each county would receive 60 percent. There is a great deal of uncertainty in this process, particularly as BLM has never requested full PILT authorization.²²

3.3.3 Historical record²³

Since the first federal PILT payments in 1977, payments have averaged about \$104 million annually. To date, over \$2.4 billion have been paid to state and local governments by the federal government. These payments have never been at the full amount authorized in the statute.

As shown in Figure 5, the PILT payments owed by the federal government to the four counties, Butte, Colusa, Glenn, and Tehama, from 1998 through 2002 have been increasing steadily. The increase in the owed amount is due to acreage of land acquired, increasing county population, payments under other federal programs, and the inflation rate.

In 1998, 46 percent of the PILT authorization amounts were made, while the numbers in 1999, 2000, 2001, and 2002 were 41, 42, 59, and 60 percent, respectively. Although in recent years the federal government has been trying to pay a larger percentage of the authorized limit, in absolute terms the gap between the authorization and the appropriation still exists.

Misconceptions about federal PILTs:

PILT payments do not account for inflation.
In 1994, Congress tied PILT calculations to the Consumer Price Index to reflect inflation.

Congress is obligated to appropriate the full authorized amount.

In fact, authorization levels provide a limit to which Congress can appropriate. This limit is not a contractual obligation, but a cap.

Congress is responsible for calculating the amount of payments due.

BLM, part of the U.S. Department of Interior, calculates the payments due to each county and proposes a PILT budget to Congress for approval.

²² Hoffman.

²³ All data in this section are from BLM.

Figure 4: Federal PILT Process

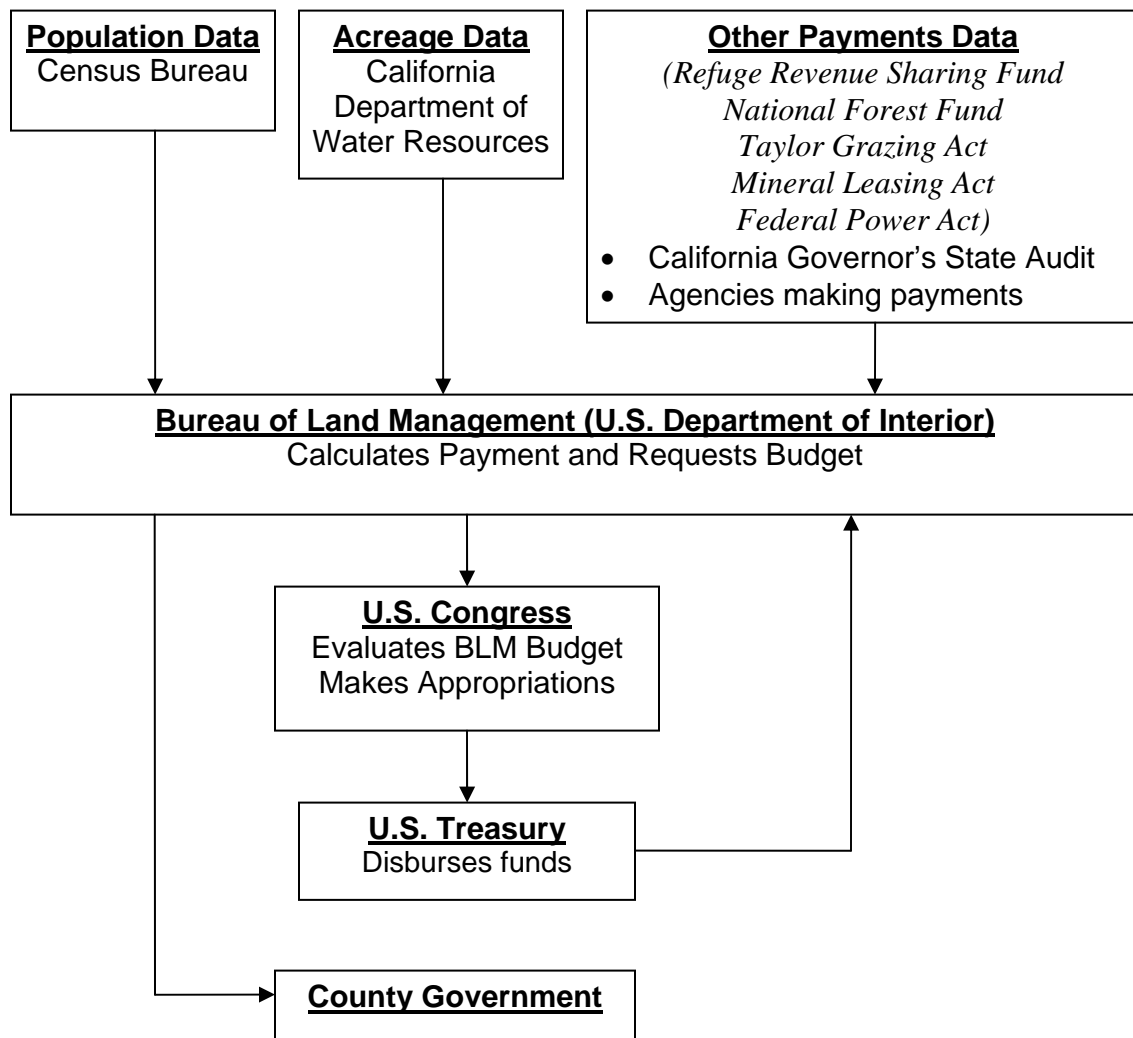
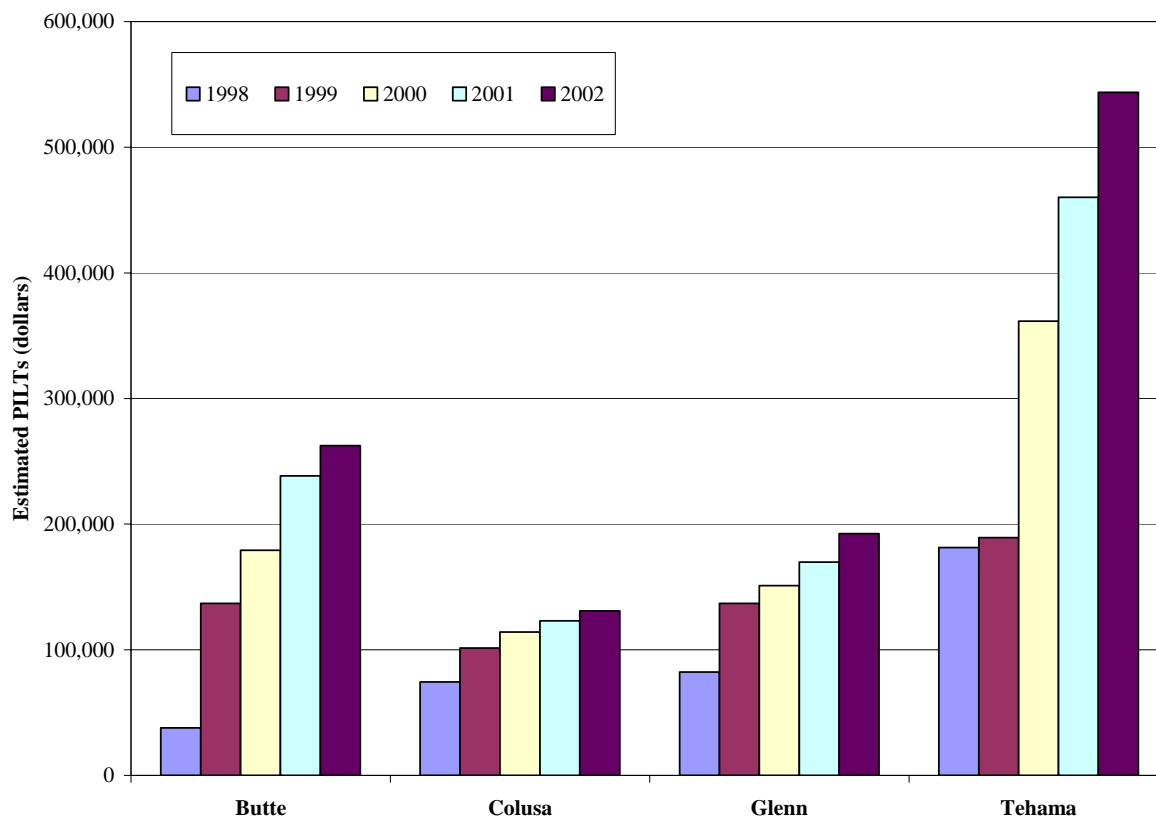


Figure 5: Federal PILT authorization limits from 1998 through 2002



3.4 State PILT Process

The state PILT program is similar to the federal PILT program, but with a few distinct differences.

3.4.1 Legislative history

State PILT payments are made on lands owned by the California Department of Fish and Game (DFG). The state government also provides annual payments to counties under the Williamson Act Program. The Program, which was created by the California Land Conservation Act of 1965, assesses agricultural or open space lands at lower tax rates to give landowners an incentive to maintain the land in its current use.²⁴

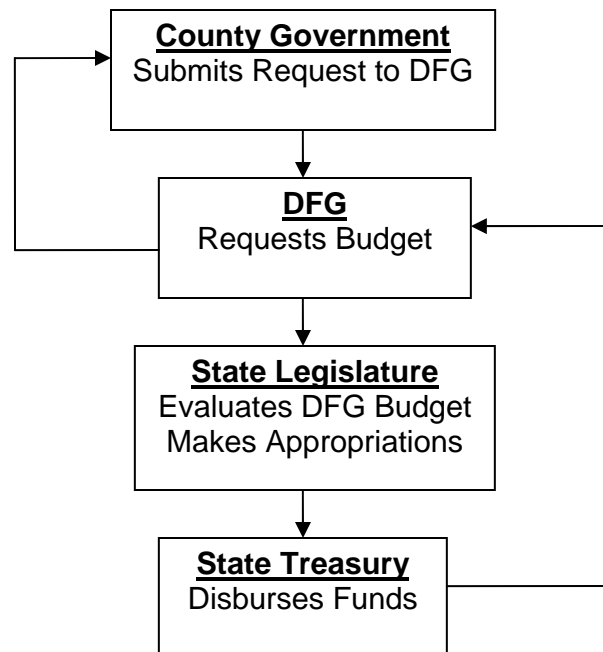
The California legislature recognized the ecological and economic significance of the Sacramento River, its tributaries and riparian lands when it passed the Sacramento River Conservation Act (SB 1086) in 1986.

²⁴ California Department of Conservation.

3.4.2 Process

Unlike the complex formula used under the federal PILT program, the state program simply sets the PILT payments equal to the property tax lost by each county due to land acquisition.²⁵ As outlined in Figure 6, each year the county governments submit a request to DFG for the amount of property taxes lost. The Department of Fish and Game then requests that amount as part of its annual budget from the state legislature. The state legislature decides whether it can fund the full request based on its budgetary constraints for that year and then orders the state treasury to disburse the funds to DFG. Unlike the federal PILT process, where BLM distributes the funds uniformly among all counties, DFG divides the funds due according to the “need” of each county. Consequently, poor counties may get full payments while rich counties may get partial or no payments. The state legislature often makes the payments full in subsequent years for the counties that did not receive the full payments in previous years.

Figure 6: State PILT Process



3.4.3 Historical record

Unlike the federal government, California has consistently made 100 percent of its payments even though there has been some delay for certain counties.²⁶ However, in 2001 and 2002 the state of California was unable to make any payments at all. Given the huge budget problems

²⁵ Adams and Gallo.

²⁶ Hoffman.

faced by the state of California, it is not certain when the PILT requests will be funded in the future.

3.5 Pending Legislation

Today, some members of Congress are attempting to overcome the uncertainty of payments that depend on the appropriation process. Bills in the Senate and House of Representatives are pending approval. The PILT and Revenue Refuge Sharing Permanent Funding Act (S. 511) would authorize the Secretary of the Interior to make the full PILT and RRS payments each year without awaiting Congressional appropriation. Like the Senate bill, The Property Tax Endowment Act of 2003 (H.R. 380) seeks to avoid the appropriations process, but the bill only requests permanent funding for the next five years (through 2008). Furthermore, counties may elect to receive PILT payments as a one-time sum to establish a locally managed endowment.

County governments are also considering the establishment of new zoning regulations to regulate the rate at which lands can be acquired for habitat. A Glenn County plan, for example, defines Wildlife Habitat Zoning Districts that would require a detailed environmental and economic assessment before a county would approve land sold for habitat restoration.²⁷

4. Criteria for Recommendations

From extensive interviews with stakeholders representing diverse interests, a few core issues were found to be the root of dissatisfaction with PILT programs. Proposed solutions were evaluated based upon their ability to address these issues.

4.1 Criteria Explained

Solutions should minimize the economic losses to farmers wishing to sell their lands and to county officials and communities concerned with general funds for building and maintaining schools and roads. Rural communities should feel *certain* that the monies that the government is obligated to provide will be fully funded. The costs incurred from flood control and damage repair and from altered farming practices must also be minimized.

Proposed solutions should be consistent with CALFED's goals of restoring habitat and enhancing endangered species populations. While this report focuses on the Sacramento River Valley, an effective solution will be applicable to other California water systems under CALFED's programs.

Effective PILT policies should:

- Minimize economic losses and costs
- Increase certainty of payments
- Be feasible
- Be cost-effective, efficient and equitable

²⁷ Butte County Administrative Office.

Approaches to fixing the PILT program must be feasible. Changes to laws or the granting of new PILT funding sources must be achievable within the current political and fiscal environment. Once implemented, the solution should continue to be successful even as the political agenda and economy change. An effective proposal will also have support from community members and all levels of government because the solution is cost-effective, efficient and equitable.

4.2 Options Considered But Eliminated

Stopping new land acquisitions, while certainly putting a stop to future lost tax revenue and associated problems, would not address the ongoing problems with PILTs for previous land acquisitions. Additionally, willing sellers would not be able to dispose of lands of low agricultural quality for the best price and would be locked into a loss-making enterprise. This option could be adopted immediately and at no additional cost. However, it fails to significantly address the PILT issue. It has the potential of reducing some dissatisfaction, but unless the PILT issue is resolved, the dissatisfaction would continue to grow.

It should be noted, however, that CALFED's Record of Decision (ROD) marked an explicit policy to minimize restoration efforts that take lands off the tax rolls. The ROD provides that acquisitions will be a last resort, after first looking at public lands available and easements.

A second option would be to change the federal PILT authorization formula to address equity concerns. Congress has struggled in the past to devise a more equitable and comprehensive compensation scheme. Counties have historically been unable to agree on language that would change the formula or law fundamentally.²⁸ Therefore, this option did not agree with this study's feasibility criteria.

5. Recommendations

Simply put, ensuring counties receive full reimbursement for lost property taxes when private lands are made public is the right thing to do.

Recommendations are made for securing greater certainty of such funding for impacted counties. Outreach, involving the process of communications and stakeholder input, is essential to all efforts. Recommendations are made for CALFED and stakeholders to explore with an understanding that the best options will be pursued.

"There should be 100 percent payments on time, everywhere."

5.1 Legislation

²⁸ Corn, M. Lynne, "PILT (Payments in Lieu of Taxes): Somewhat Simplified," CSR Report 98-374, June 24, 1998.

5.1.1 Support legislation that would improve PILT programs

As discussed previously, federal legislation that would improve current PILT programs is currently pending in both the Senate and the House of Representatives (at the time of this writing). CALFED and PILT stakeholders should actively support these bills or similar future legislation.

5.1.2 Explore California-specific federal legislation to ensure PILT payments

As an alternative to the current proposals that target all PILTs nationwide, legislation could be drafted that guarantees payments in California only. An obvious criticism of this plan might be that legislators from outside California would have no reason to vote for such a bill. However, numerous other states with large tracts of public lands (Utah, for example), might sense an opportunity to get similar legislation for themselves if California were successful. Thus, California's PILT stakeholders might build a coalition of congressional support for state-specific PILT guarantees. At least a dozen other, mostly western, states receive substantial PILT monies from the Bureau of Land Management and would likely back California's efforts. Still more backing could be garnered by exchanging support on California PILT legislation for Californian support on other state-specific issues. Essential to pursuing this alternative is for stakeholders to lobby their congress people with a loud and unified voice.

5.1.3 Explore a CALFED budget line item as alternative funding for PILTs

Still another way to obtain greater certainty in annual funding for PILTs would be to attach a line item to CALFED's budget. This plan could attack the PILT problem at both the state and federal level. Tacking the additional funds needed to make full PILTs to the CALFED budget would likely make little difference in the ultimate approval of the annual CALFED appropriation, as it would represent only a small percent increase in the overall appropriation. Furthermore, at the state level any opposition to such a plan would be more than counter-balanced by the broad constituency of PILT beneficiaries within California. On the federal level, CALFED might, at a minimum, receive extra funding sufficient to make-up for the annual short-fall in federal payments in lieu of taxes.

5.2 Alternative Sources of In Lieu Funding

There are also a number of possible sources of alternative funding to ensure counties can make up short-falls when PILTs are under-funded or not made at all. These options occur at a local level and are not subject to state or federal budgetary fluctuations. Possible alternatives include county-level grants or guaranteed multi-year payments by the land purchasing agent.

5.2.1 Explore lump-sum alternatives to PILTs

One way to ensure counties greater certainty of in lieu payments is to have the agent who buys the land pay the county a lump-sum PILT based on the present discounted value of the expected stream of income from the property taxes on the land. The lump-sum payment could take the form of a grant which the county could then invest and draw on as it

"Other counties have destroyed their habitat for economic benefit. We haven't, and now we're being punished. We should get the benefit of restoration. "

desired. This approach would provide counties far greater certainty than current PILT programs, but would undoubtedly place them under pressure to spend more money in the near-term than they would under the current revenue stream. One way to mitigate the pressure on the county to spend the lump-sum all at once would be to develop guidelines or regulations that placed a maximum, or “ceiling,” on how much of the one-time payment the county could spend each year. This would help to ensure that the lump-sum money acted more like the steady flow of property tax revenues it was meant to replace, but would leave counties with some flexibility to make judgments about their own short-term and long-term needs.

5.2.2 Explore a third-party guaranteed payment plan

Another alternative is to have the land-purchasing agent set up a fund through a commercial financial institution from which annual payments would be made to counties. Such an arrangement would work similarly to the option above, but would eliminate the pressure for the county to spend the money up front, and would not require the purchasing agent to pay the entire lump-sum at the time of the land sale. Instead the third-party (e.g. the bank) would guarantee the future payments as it would any other financial contract, and the buyer would be liable to make the annual payments. Under the current system, neither the state nor the federal government agencies are strictly liable in this way.

5.3 Outreach

The degree to which any program can ameliorate stakeholder dissatisfaction is dependent upon an honest and open forum to reduce distrust among affected parties. The desire for improved communication between parties was nearly universal among those contacted for this study. CALFED is clearly aware of this issue and has been making significant strides toward a more inclusive habitat restoration decision-making process, as evidenced by the goals of the Working Landscapes Committee. However, this Committee is focused on land use education for landowners, not land acquisition issues.

While there have been many meaningful efforts to be more inclusive, there is a great deal of concern among some stakeholders about being excluded. The following recommendations are intended to formalize these efforts, providing observable results that may begin to build trust.

“My impression is that the gap is more philosophical than economic.”

5.3.1 Formalize liaison relationships between CALFED and stakeholders

One way to ensure observable results in outreach efforts would be to formalize liaison relationships between CALFED and groups representing diverse interests. Liaisons would minimize the perception of some groups that they do not “have a seat at the table,” as they perceive that other groups do who share CALFED’s goals. Furthermore, liaisons would likely increase attendance at public meetings intended to welcome community input which are now under-attended. For example, a liaison representing farmers’ interests could help ensure that meetings in which farmers’ input is desired are not held during planting or harvesting season.

5.3.2 Include outcomes in outreach performance measures

CALFED's Working Landscapes Committee is an example of an organization with clear goals and performance measures regarding stakeholder input, primarily focusing on increased participation and attendance in a variety of community forums. While a record of attendance at a community meeting might indicate that a wide variety of interests were represented, it is not evidence that those interests were represented in the decisions subsequently made. Those contacted for this study were concerned both with equitable outcomes and with equitable process. As such, performance measures of outreach goals should include not only attendance and participation, but also specific ways in which decisions are affected.

6. Conclusions

Current Payment In Lieu of Tax programs do not consistently and fully reimburse counties for lost property tax revenues when private land is made public. As a result, counties are made unambiguously worse off economically. Correcting this problem with PILTs and ensuring full reimbursement of lost revenues is the right thing to do.

To this end, CALFED and appropriate stakeholders should:

- Actively support Congressional bills H.R. 380 and S. 511
- Explore California-specific federal legislation to ensure PILT payments
- Explore a CALFED budget line item as alternative funding for PILTs
- Explore lump-sum alternatives to PILTs
- Explore a third-party guaranteed payment plan
- Formalize liaison relationships between CALFED and stakeholders
- Include outcomes in outreach performance measures

The shortcomings of federal and state PILT programs exacerbate dissatisfaction with land acquisition policies. Although identifying and correcting problems with PILT payments cannot hope to address all sources of dissatisfaction, ensuring that counties receive full compensation for lost tax revenues will help by providing a more economically equitable outcome.

This document is intended to offer substantive recommendations and serve as a template for further discussion and mediation of PILT-related issues among all stakeholders.

References

Adams, Ronald G. and David E. Gallo, *Final Report: The Economic Impact on Glenn County of Public Land Acquisition and Habitat Restoration Activities in the Sacramento River Conservation Area*, Under contract from the U.S. Fish and Wildlife Service, California State University Chico, June 15, 2001.

Bureau of Land Management (BLM) "Payments in Lieu of Taxes – California," <http://www.ca.blm.gov/caso/piltmain.html>, February 19, 2003.

Butte County Administrative Office, "Report to the Board of Supervisors on Land Acquisition for Resource Protection in Butte County," June 26, 2001.

CALFED Bay-Delta Program, "Findings on Specific Impacts and Mitigation Measures: Potentially Significant Adverse Impacts on Agricultural Land and Water Use Associated with the Preferred Program Alternative," CEQU Findings of Fact, Section 7.1, August 28, 2000.

CALFED Bay-Delta Program, "Local Partnerships Planning Process: Collaborating with Agricultural Landowners and Local Communities to Meet CALFED Goals and Objectives," March 7, 2002.

CALFED Working Landscapes Subcommittee, "CALFED Working Landscapes Subcommittee Action Plan (Draft)," March 2003.

California Department of Conservation, "Williamson Act Program," <http://www.consrv.ca.gov/DLRP/lca/lrcc/governingstatutes.htm>, February 23, 2003.

California Farm Bureau Federation, "Re: Jones and Stokes, Draft Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area," Letter to Marlyce Myers, The Nature Conservancy, November 13, 2002.

Corn, M. Lynne, "PILT (Payments in Lieu of Taxes): Somewhat Simplified," Congressional Research Service (CRS) Report 98-374, June 24, 1998.

Davis, Kim (SRCAF PILT Committee), "Re: Jones and Stokes, Draft Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area," Letter to Marlyce Myers, The Nature Conservancy, October 25, 2002.

Evans, Tom, "Restoring the 'Natural River Process:' Continuing the Legacy," Family Water Alliance, (http://www.familywateralliance.com/a_river_runs_through_it1.htm), April 29 2003.

Foerster, Kevin S., (Project Leader, U.S. Fish and Wildlife Service), "Re: Jones and Stokes, Draft Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area," Letter to Marlyce Myers, The Nature Conservancy, November 15 2002.

Hacking, Heather, "Habitat conversion permit discussion may kill two land buys," *Chico Enterprise Record*, January 8, 2003.

Hackney, Stephen (Director of Planning and Building, County of Colusa), "Re: Jones and Stokes, Draft Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area," Letter to Marlyce Myers, The Nature Conservancy, October 18 2002.

Jacobs, Diana, (California Department of Fish and Game) "PILT – In-lieu Payments," Personal Communication to Sacramento River Conservation Area Board and Staff, December 14 2000.

Jacobs, Katharine L., Luoma, Samuel N. and Taylor, Kim A., "CALFED: An Experiment in Science and Decisionmaking," *Environment*, Volume 45, Number 1, January/February 2003.

Jones & Stokes, *Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area*, September 2002.

Legislative Analysts Office, "Analysis of the 2003-04 Budget Bill," (http://www.lao.ca.gov/analysis_2003/resources/res_2_cc_calfed_anl03.htm), April 29 2003.

Legislative Analysts Office, "California's Tax System, A Primer. Chapter 6: Local Taxes," (<http://www.lao.ca.gov/2001/tax%5Fprimer/0101%5Ftaxprimer%5Fchapter6.html>), January 2001.

McIntosh, Paul (Chief Administrative Officer, County of Butte), "Re: Jones and Stokes, Draft Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area," Letter to Marlyce Myers, The Nature Conservancy, November 13 2002.

Romano, Ed (Glenn County Agricultural Commissioner), "Re: Jones and Stokes, Draft Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area," Letter to Marlyce Myers, The Nature Conservancy, 2002.

Sutton, Susan (Family Water Alliance), "Re: Jones and Stokes, Draft Socioeconomic Assessment of Proposed Habitat Restoration within the Riparian Corridor of the Sacramento River Conservation Area," Letter to Marlyce Myers, The Nature Conservancy, October 25 2002.

The Nature Conservancy, "Understanding Conservation Easements,"
<http://nature.org/wherewework/northamerica/states/idaho/science/art8987.html>, April 4, 2003.

Water Education Foundation, "California Issues: A Briefing on California Water Issues,"
<http://www.water-ed.org/cabriefing.asp>, March 26, 2003.

Water Education Foundation, "Layperson's Guide to Agricultural Drainage," 1996.

Water Education Foundation, "Layperson's Guide to California Water," 2000a.

Water Education Foundation, "Layperson's Guide to Environmental Restoration," 2000b.

Water Education Foundation, "Layperson's Guide to The Delta," 2000.

Personal Communications

Broddrick, Ryan. Ducks Unlimited; phone interview, March 31, 2003.

Bundy, Burt. Glenn County Board of Supervisors; phone interview, March 20, 2003.

Bungarz, Denny. Glenn County Board of Supervisors; phone interview, March 20, 2003.

Cummings, Dan. Owner, Cummings Farm Management ; phone interview, April 17, 2003.

Ellwood, John. Professor of Political Science, Goldman School of Public Policy at UC-Berkeley;
personal interview, April 4, 2003.

Friedman, Lee. Professor of Economics, Goldman School of Public Policy at UC-Berkeley;
personal interview, April 18, 2003.

Gamper, John. Director of Taxation and Land Use, California Farm Bureau; phone
conversation, April 10, 2003.

Hawkins, Renee. Resources Law Group, LLP; phone interview, March 31, 2003.

Hoffman, John. Regional Council of Rural Counties; phone interview, April 8, 2003.

Howell, Bill. PILT Accountant, Bureau of Land Management, phone interview, April 17, 2003.

Jacobs, Diana. Scientific Advisor, California Department of Fish and Game; phone interview,
April 14, 2003.

Josiassen, Curt. Rice Farmer and Chairman, Butte County Board of Supervisors; phone interview, April 18, 2003.

Lewis, Kari. Land Acquisitions, California Department of Fish and Game; phone conversation, April 2, 2003.

Morris, Cathy. Field Representative, The Nature Conservancy; phone interview, April 11, 2003.

Myers, Marlyce. Project Manager, The Nature Conservancy; phone interview, March 20, 2003.

Oehler, Alex. Assistant to U.S. Congressman Wally Herger; phone interview, April 7, 2003.

Sutton, Jeff. CEO/Executive Director, Family Water Alliance; phone interview, April 23, 2003.

Werner, Greg. The Nature Conservancy; phone conversation, April 10, 2003.

Wright, Patrick. Director, CALFED Bay-Delta Authority; personal interview, February 24, 2003.

Wright, Patrick and Renee Hawkins; meeting, April 11, 2003.

Zeleke, Dawit. Project Manager, The Nature Conservancy, phone interview, April 7, 2003.

Zeiper, Matt. Director of Research, Conservation Finance Program, Trust for Public Land; phone interview, April 10, 2003

To: California Bay-Delta Public Advisory Committee
Working Landscapes Sub-committee

From: Payment-in Lieu-of-Taxes (PILT) Workgroup

Subject: Report on Prop 218 Assessments

Date: October 21, 2004

INTRODUCTION

The Payment-in Lieu-of-Taxes (PILT) Workgroup presented a report and list of recommendations to the Working Landscapes Subcommittee (WLS) regarding the PILT issue in September 2004. As a result of this report, issues were raised concerning agency's non-payment of special benefit assessments under Proposition 218 (1996) on private lands acquired for restoration or other environmental reasons associated with the implementation of CALFED programs and the resulting impact on private landowners and local governments. This report provides some basic information on Prop 218 assessments and their limitations as well as some data regarding the potential magnitude of the problem of non-payment on local governments.

BACKGROUND

California voters passed Proposition 218 in November 1996. This measure, authored by the Howard Jarvis Taxpayers Association, amended the constitution changing how California local governments impose taxes, fees and assessments making it more difficult for local governments to raise revenues. The proponents of Prop 218 argue that local governments have been getting around the provisions of Prop 13 limiting their ability to raise local property taxes by labeling de facto taxes as "assessments" or "fees".

With regard to our interests here, Prop 218 tightened the required relationship between assessment-funded activities and the benefits conferred on property. The amount of assessment on any parcel can not exceed "the reasonable cost of the proportional special benefit conferred on that parcel". Prop 218 also requires all government agencies, to pay property assessments unless they can show that their properties receive no special benefit. Under Prop 218, the courts are required to interpret its various provisions liberally, in order to fulfill its purposes of "limiting local government revenues and enhancing taxpayer consent". In general, the intent of Prop 218 is to ensure that all taxes and most charges on property owners are subject to voter approval. Also, Prop 218 seeks to curb abuses by local government in the use of assessments and property-related fees as revenue-raising tools to pay for general governmental services rather than property-related services.

Upon passage of Prop 218, the Legislative Analyst Office (LAO) estimated the impact on local governments to be no more than a 5 percent annual decrease in aggregate local government own-source revenues. However, much like PILT, typically smaller, more rural areas would sustain a greater impact associated with this reduction because relatively small revenue losses to local government general funds

can trigger significant reductions to the few programs over which they have control, such as fire and library services. In general associated revenue reductions result in lower payments by landowners to governments and thereby decreased spending for local services.

FINDINGS/DEFINITIONS

The following definitions may be helpful in the analysis of the Prop 218 assessment dilemma. A “tax” is a charge on an individual or business that pays for governmental services or facilities that benefit the public broadly. When looking at a “tax” there need not be any direct relationship between how much a person or business pays and how much service they receive from government. A tax is a “special tax” if its revenue is used for a specific purpose and a “general tax” if its revenue is used for any governmental purpose. A “benefit assessment” is a charge levied on property to pay for a public improvement or service that benefits that particular property and is linked to the cost of providing a service or improvement such as flood control or landscaping. Although they appear on the property tax bill, benefit assessments are different in that they directly benefit the property and are linked to the cost of providing that benefit. They are also not based on the value of the property, but the cost of providing the benefit. A “fee” is a charge imposed on an individual or business for a service provided directly to an individual or business and may not exceed the cost of government to provide such a service.

Under Prop 218, local governments were required to bring all existing general taxes and assessments not meeting specific exemptions before the voters for approval by November 1998. The conditions for exemption include: 1) an assessment that was previously approved by the voters, or associated property owners at the time of its creation; 2) the assessment proceeds are pledged to bond repayment; 3) the assessment proceeds are used to pay for sidewalks, streets, sewers, water, flood control, drainage systems, or vector control. If the voters approved these taxes and non-exempt assessments they continued.

The LAO’s review indicates that assessments that are not likely to satisfy the conditions for exemptions are those associated with fire, lighting and landscaping, and park and recreation activities. Assessments determined by local government to provide a “special benefit” to property owners, and not a general benefit to the public could be financed by an assessment levied upon the appropriate landowners. Programs that benefit people, rather than specific properties, such as libraries, recreation programs, police protection must be financed by a general or special tax approved by the voters. In addition, properties owned by schools and other governmental agencies, previously exempt from some assessment charges, must now pay assessments unless the government can show that its property receives no special benefit.

Under Proposition 218, the following occurs:

1. Local governmental authority to impose taxes and property-related assessments, fees and charges is limited.
2. A majority of voters must approve increase in general taxes and two-thirds of voters must approve special taxes.
3. Assessments, fees and charges must be submitted to property owners for approval or rejection, after notice and public hearing.

4. Assessments are limited to the special benefit conferred. Fees and charges are limited to the cost of providing the service and may not be imposed for general governmental services available to the public.

DATA ANALYSIS

The State Controllers Office website (www.sco.ca.gov) displays information self-reported by county auditors regarding county revenue generation and expenditure statistics. For the year 2001/02, the data shows that special benefit assessments count for approximately .05% of the total revenues brought in by counties, or approximately 19.7 million dollars for the entire state of California. This amount reflects a 22.76% increase of revenue associated with benefit assessments over the prior year, but further linear analysis of the data would be necessary to make any assumptions of whether or not this increase is a trend or specific to these two particular years. Special benefit assessments by county are displayed in Table 1 (attached). Out of 57 counties, only 15 (26%) report any revenue associated with a special benefit assessment.

CONCLUSION

The overall percentage of revenue to local governments statewide is statistically very low (.05%) and there doesn't appear to be a significant linkage between CALFED actions and the particular counties reporting special benefit assessments in their revenues. The data is not specific enough to determine payment or non-payment by specific agencies, but in consideration of the determination through Prop 218 that government agencies may be exempt from payment on a case-by-case basis if they can show that their property does not receive special benefits from the assessment, it appears that this issue should, and will be determined through the judicial process.

To: California Bay-Delta Public Advisory Committee
Working Landscape Subcommittee

From: Payment-in Lieu-of-Taxes (PILT) Workgroup

Subject: Progress Report and Recommendations

Date: October 26, 2004

INTRODUCTION

The Working Landscapes Subcommittee (WLS) was established in March 2002 as a forum for private landowners, local governments, CALFED agencies and others to raise issues concerning CALFED implementation and its impacts on private lands and local communities. More importantly, WLS was formed to provide advice and recommendations to the Bay-Delta Public Advisory Committee (BDPAC), specifically the Ecosystem Restoration Program element, on implementing the Bay-Delta Program in a collaborative manner with private landowners and local governments; i.e., a working landscapes approach.

BACKGROUND

In 2002, the Executive Director of CALFED, Patrick Wright, commissioned a study of PILT by a team of University of California, Berkeley, graduate students from the School of Public Policy. At its September 2003 meeting, the WLS received a verbal and written report from the students on their study. At this meeting, Patrick Wright recommended that WLS consider taking the students' report to the next level. He also suggested that a small work group of the Subcommittee be convened to study the issue further and recommend next steps.

In October 2003, WLS appointed a work group to examine the performance of state and federal payment-in lieu-of-taxes (PILT) programs. Members of the Work Group included: Burt Bundy (Sacramento River Conservation Area Forum), Jeff Sutton (Family Water Alliance), Denny Bungarz (Glenn County Board of Supervisors), Ken Trott (CA Dept. of Food and Agriculture), Tina Cannon (CA Department of Fish and Game), and Renee Hawkins (Resources Law Group). Later, the Work Group invited John Hofmann (Regional Council of Rural Counties), Bob Clark (North Delta Water Agency) and Vickie Newlin (CALFED) to join in its work.

PILT programs are intended to offset adverse impacts on local property tax revenues due to state and federal acquisitions of private property. Because implementation of the CALFED Program involves the acquisition of private property to achieve its goals, it poses the potential for adverse impacts on city, county and special district tax bases. For this reason, the performance of PILT programs with respect to CALFED is of particular interest to WLS and its stakeholders.

The following report provides information from the PILT Work Group's deliberations following five meetings, and also includes recommendations to WLS for BDPAC consideration.

FINDINGS

Federal PILT - The Federal Payment-in Lieu-of Taxes Act (PILT) provides a statutory formula that uses entitlement acreage and county population as two important variables. Entitlement acres include: National Forests, National Parks, Bureau of Land Management (BLM) lands, federal water resource development projects, National Wildlife Reserve Areas, Army Corps dredge disposal areas and certain military installations. The value derived from the entitlement acres is based upon an indirect relationship between population and per capita values; as population increases, per capita values decrease, capping at a population of 50,000. To avoid duplicative payments, other federal land payments received by the county for the entitlement lands are deducted from the values, but the final PILT payment is subject to a minimum level established by the entitlement acres or population.

Counties may also receive temporary payments for the acquisition of certain lands or negotiated as part of the transaction. These payments are designed to mitigate any economic impacts due to the acquisition. These temporary payments are typically for a minimum of five years, but may continue for longer.

The BLM administers the Federal PILT program on behalf of all federal land holding agencies. Based on the previously described formula, the BLM includes PILT funding in its annual budget request to Congress. If funding is appropriated, the BLM makes the payments directly to the counties. These PILT payments are perhaps the only federal payments to counties that do not pass through the state Department of Finance. Historically, the congressional appropriations for PILT have fallen short of that owed by 40 to 50 percent, improving to a 30 percent shortfall in 2004. When appropriations are not sufficient, the BLM prorates available funds proportionately among counties based on their authorized amounts.

State PILT - With regard to State PILT, only lands acquired by California Department of Fish and Game (Fish and Game) for wildlife management areas qualify. State PILT payments are based on appraisals that are made at the time of acquisition. Unlike the federal PILT payments, the appraisals and the resulting PILT payments are fixed in time and do not get adjusted for cost of living increases through fresh appraisals.

Fish and Game requests funds for PILT payments as part of its budget request each year. Traditionally, the Legislature has approved the requested funding. Occasionally, budget constraints have resulted in partial or no PILT funding at the State level, which has been the case the past two years. When funds are insufficient for full PILT payments, partial payments are spread to the counties based on set priorities related to assumed need. Through the priorities, the smallest counties by population receive full payments then progressing toward the largest counties until the funds are exhausted. Historically, when full payments are not made, payments have been paid retroactively in better economic conditions. State PILT payments over the last four years are shown in the attached charts prepared from data acquired from the California Department of Fish & Game website.

Benefit Assessments – During the Working Landscapes Subcommittee's review of the draft version of this report, the issue of state payment of local benefit assessments was raised. The issue had not been previously discussed by the Work Group. During September and October 2004, the Work Group held two meetings to study and deliberate over the issue.

The issue of benefits assessment is complex. The complexity increased when, in November 1996, the voters enacted Proposition 218. This ballot proposition limits the ability of local governments to assess property for *general* governmental services, such as fire suppression or library services. Pursuant to Proposition 218, assessments can only be used to fund *specific services* that benefit the assessed properties. For more information on benefit assessments and Proposition 218, the California Senate Committee on Local Government will be publishing a citizen guide to special benefit assessments by the end of 2004. To access the final draft of the guide, go to:
http://www.sen.ca.gov/ftp/SEN/COMMITTEE/STANDING/LOC_GOV/_home/PUBLICATIONS.HTP.

With regard to Prop 218 assessments, three issues were discussed by the Work Group. 1) Are state and federal CALFED agencies required to pay benefit assessments against properties they acquire? 2) What is the record for their payment of these assessments? 3) What is the level of potential impact of nonpayment on local governments?

The Work Group researched benefits assessments and prepared a report to help answer these questions. The Work Group found that the Constitution, as amended by Proposition 218, requires state agencies to pay valid assessments. Unfortunately, the Work Group's initial research did not find information on what state or federal agencies own land with assessment liabilities or whether those assessments are currently being paid. It was the Work Group's conclusion that valid assessments should be paid by both state and federal CALFED agencies when lands with assessment liabilities are acquired. Further research is required, however, to determine whether non-payment is a problem.

With respect to the potential level of impact resulting from the loss of benefit assessments by local governments, the overall contribution of benefit assessments relative to other local revenues is small (0.05 percent statewide). However, in rural areas where benefit assessments may constitute a major source of revenue for land services and improvements, the impacts of the loss of assessment payments could be significant.

Finally, what constitutes a valid assessment is important to agencies which are obligated to pay them. Currently, the determination of validity is made on a case-by-case basis, and in at least one case, is pending litigation. Therefore, the Work Group defers to the courts for increased clarity on the validity of benefit assessments for the sake of state agency payment.

Information Gaps – In researching the Department of Fish and Game's (CDF&G) budget to determine how state PILT payments are shown or aggregated, it was discovered that the request for PILT payments is included in the management component of the CDF&G budget, rather than delineated as a discrete line item in the budget. Although, the Legislature may be supportive of full payment of the PILT program, this act of "rolling up" the allocation into a broader budget picture makes it easier for it to be overlooked when allocations are cut in budget shortfalls.

RECOMMENDATIONS

Focusing specifically on the existing PILT systems and formulas, and emphasizing the importance of bringing forward workable solutions, the workgroup makes the following recommendations:

1. Request that the administration list state PILT payments owed to local governments as distinct line items in the state budget.
2. Recommendation that the state legislature consistently approve authorization for PILT payments to local governments for CALFED-funded land acquisitions.
3. Recommendation that the Governor work with California congressional leaders and the federal administration toward full PILT payment authorization by Congress.
4. Recommend that the State examine state PILT legislation to include all resource-related acquisitions as qualifying for PILT.
5. Support of legislation or regulations to amend the state process for calculating PILT to include a regular periodic readjustment of the PILT payment amount, similar to the practice used by the federal government in calculating PILT payments. This would eliminate the concern that once a property is acquired by the state, the PILT payment is fixed in perpetuity, without consideration of the changing values of similar properties.

Other recommendations considered by the Work Group, but not offered for the Subcommittee's approval, either due to infeasibility or the need for further study, included:

1. Explore legislation to extend PILT payment requirements to other state land acquisition programs where acquisitions have net adverse impacts on local tax revenues;
2. Frame next level of PILT research questions and recommend CALFED Science Program funding of PILT research to document extent and geography of land acquisition impacts on local tax revenues and adequacy of PILT payments.
3. Set aside project-specific funds to provide limited term payments to local governments to offset local economic impacts of acquisition projects.

With the Subcommittee's further guidance, the Work Group would like to continue working on these potential recommendations for later consideration.

COUNTY	FEDERAL NON- PAYMENT FY02/03	STATE NON- PAYMENT FY02/03	TOTAL NON- PAYMENT FY 02/03	GENERAL FUND BUDGET FY 99/00	% GENERAL FUND BUDGET FY 99/00
Alpine	\$37,122	\$42,891	\$80,013	\$3,093,985	2.59%
Butte	\$13,242	\$97,100	\$110,342	\$12,025,046	0.92%
Colusa	\$21,142	\$3,091	\$24,233	\$7,635,751	0.32%
Del Norte	\$40,683	\$23,131	\$63,814	\$11,089,188	0.58%
Fresno	\$444,866	\$15,469	\$460,335	\$59,739,102	0.77%
Glenn	\$14,621	\$57,411	\$72,032	\$5,413,134	1.33%
Humboldt	\$96,727	\$33,929	\$130,656	\$12,483,492	1.05%
Imperial	\$775,521	\$8,876	\$784,397	\$15,059,177	5.21%
Inyo	\$455,057	\$858	\$455,915	\$6,157,429	7.40%
Lake	\$33,574	\$15,374	\$48,948	\$7,032,569	0.70%
Lassen	\$145,344	\$63,229	\$208,573	\$6,364,088	3.28%
Madera	\$141,416	\$2,708	\$144,124	\$11,062,669	1.30%
Marin	\$64,723	\$21,459	\$86,182	\$61,635,127	0.14%
Merced	\$23,500	\$75,242	\$98,742	\$21,585,611	0.46%
Modoc	\$152,839	\$41,756	\$194,595	\$2,288,542	8.50%
Mono	\$257,884	\$28,136	\$286,020	\$4,956,256	5.77%
Monterey	\$220,009	\$9,277	\$229,286	\$45,766,609	0.50%
Napa	\$39,699	\$51,016	\$90,715	\$22,018,589	0.41%
Nevada	\$17,907	\$4,465	\$22,372	\$9,419,373	0.24%
Placer	\$34,836	\$16	\$34,852	\$42,023,186	0.08%
Plumas	\$103,016	\$5,948	\$108,964	\$6,598,195	1.65%
Riverside	\$867,702	\$103,649	\$971,351	\$122,199,059	0.79%
Sacramento	\$5,852	\$0	\$5,852	\$122,822,293	0.00%
San Benito	\$65,435	\$0	\$65,435	\$4,802,332	1.36%
San Bernadino	\$819,714	\$5,489	\$825,203	\$163,088,276	0.51%
San Diego	\$290,351	\$12,960	\$303,311	\$287,861,693	0.11%
San Francisco	\$2,160	\$0	\$2,160	\$414,167,650	0.00%
San Juaquin	\$1,438	\$0	\$1,438	\$31,677,674	0.00%
San Luis Obispo	\$282,130	\$39	\$282,169	\$37,424,083	0.75%
San Mateo	\$8,047	\$0	\$8,047	\$67,373,179	0.01%
Santa Barbara	\$460,913	\$0	\$460,913	\$49,178,136	0.94%
Santa Clara	\$1,260	\$0	\$1,260	\$227,154,364	0.00%
Santa Cruz	\$24	\$0	\$24	\$19,658,785	0.00%
Shasta	\$109,074	\$4,276	\$113,350	\$12,155,501	0.93%
Sierra	\$39,938	\$36,410	\$76,348	\$1,953,051	3.91%
Siskiyou	\$225,736	\$51,530	\$277,266	\$7,148,106	3.88%
Solano	\$4,608	\$43,466	\$48,074	\$26,155,464	0.18%

Meeting Dates: April 13 and 14, 2005

COUNTY	FEDERAL NON- PAYMENT FY02/03	STATE NON- PAYMENT FY02/03	TOTAL NON- PAYMENT FY 02/03	GENERAL FUND BUDGET FY 99/00	% GENERAL FUND BUDGET FY 99/00
Sonoma	\$2,133	\$19,902	\$22,035	\$62,487,198	0.04%
Stanislaus	\$2,170	\$799	\$2,969	\$58,265,939	0.01%
Sutter	\$4	\$20,630	\$20,634	\$13,221,712	0.16%
Tehama	\$39,363	\$7,961	\$47,324	\$3,754,182	1.26%
Trinity	\$135,901	\$0	\$135,901	\$3,942,920	3.45%
Tulare	\$684,863	\$444	\$685,307	\$47,465,694	1.44%
Tuolumne	\$345,423	\$0	\$345,423	\$10,779,706	3.20%
Ventura	\$369,638	\$0	\$369,638	\$44,956,202	0.82%
Yolo	\$20,602	\$112,391	\$132,993	\$15,749,990	0.84%
Yuba	\$4,331	\$39,229	\$43,560	\$3,875,711	1.12%
TOTALS	\$7,922,538	\$1,060,557	\$8,983,095	\$2,232,766,018	1.18%

*CSAC County Fact Book - 2003

US Bureau of Land Management website

California Dept of Fish & Game website